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Supreme Court,
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MICHAEL RODAK, J

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1496

FRANK R. MADERA,

Petitioner,

v.

BROOKLYN BAR ASSOCIATION,

Respondent.

RESPONDENT'S BRIEF

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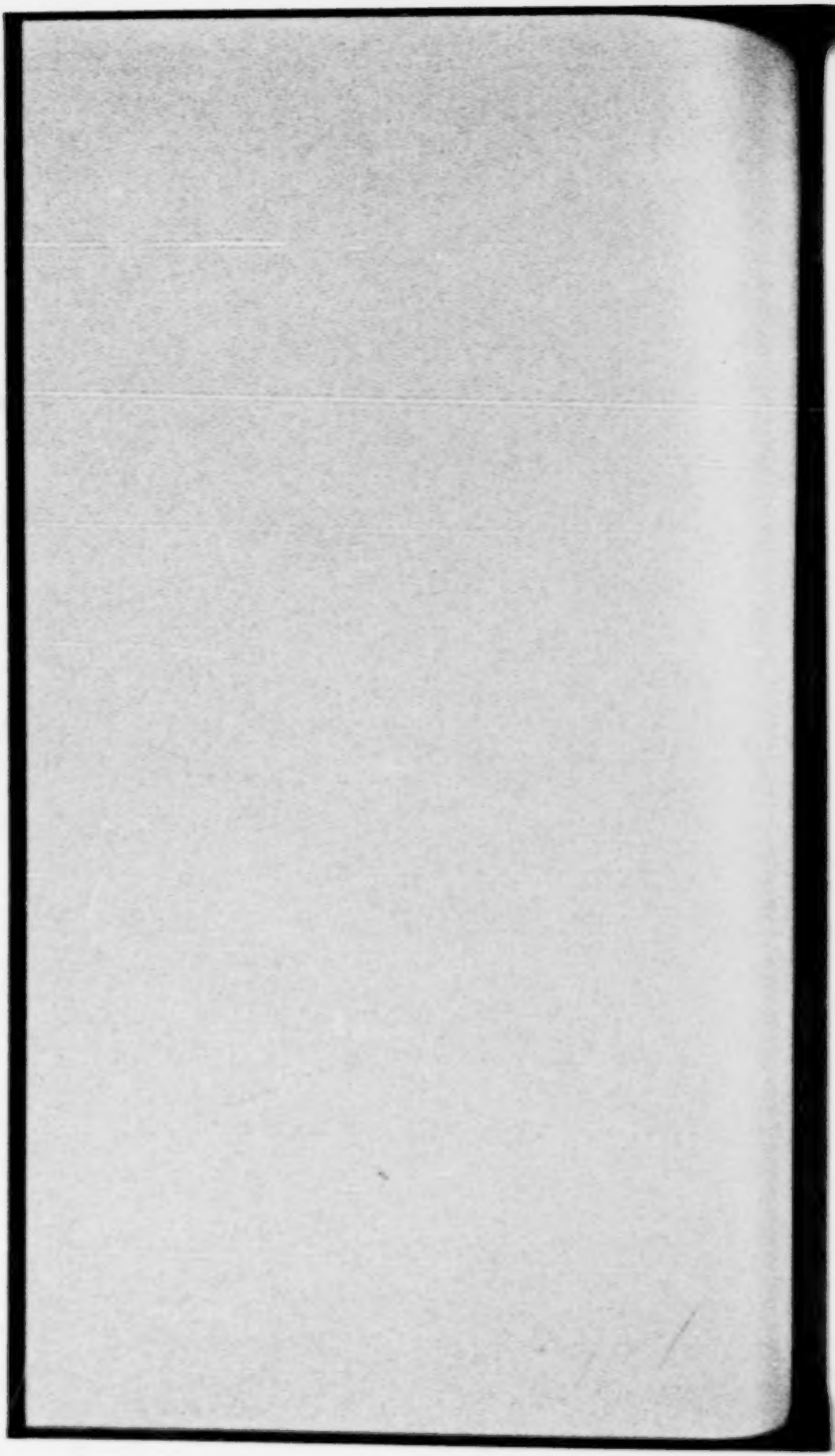
May 31, 1973.



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The Facts

Petitioner, a member of the New York bar, was the subt of a disciplinary proceeding by petition (A22-33). e petition alleged that four different complainants had de complaints to Brooklyn Bar Association involving rious serious acts of professional misconduct by Frank Madera.

Through counsel, petitioner answered the petition (A37) d subsequently the issues tendered by the pleadings were ferred for a hearing. Petitioner appeared at the hearing th counsel and actively defended.

In order to sustain the petition, the respondent herein led various witnesses and introduced documentary evince. Finally, the petitioner was called as a witness in

chief with respect to only two of the complaints (A257). It was stated that if he were to assert his privilege then something else would have to be done to supply the missing testimony (A260-1).

What really amounts to the nub of the matter is that it became necessary to call petitioner because he himself had bought off the complainants by satisfying their complaints (A285-7). The problem thus presented, a circumstance favoring petitioner, was made plain by the referee's comments (A262-3) and was duly noted by the Appellate Division (A138).

In any event, Madera testified (A264, *et seq.*). He did not raise any claim of privilege and his testimony was in large measure exculpatory. As far as the referee was concerned, Madera helped himself as to all of the complaints except that made by Febos which was proven by independent testimony (A82-92).

Reasons for Denying the Writ

There just plainly is no substance to the petition. This was not a criminal proceeding. Petitioner had more due process than if he had been an accused felon. The Appellate Division clearly had jurisdiction over him and the statute (Judiciary Law, Sec. 90) was painstakingly observed.

The Appellate Division would have been justified in ordering Madera's disbarment on the basis of a finding that any one of the complaints was sustained. As above noted, petitioner's testimony applied to only two of the complaints.

The complaint that Madera was coerced into surrendering his Fifth Amendment rights finds absolutely no support in the record. In addition, Madera did not raise such a complaint before the Appellate Division. The referee's report was largely favorable to him. He moved to confirm all of it except as to that portion which found against him. Nowhere in his papers (A126-139) is there any contention that any person infringed on his constitutional rights. Indeed, he affirmed that the referee arrived at the proper conclusion as to those charges as to which Madera was called upon to testify (A128).

The rest of the petition is a melange of formless complaints buttressed by inapposite citations and much nit picking which scarcely rises to the level of constitutional concern. Thus, the argument that Madera's Fourteenth Amendment rights were violated seems to be directed to the length of the per curiam opinion of the Appellate Division and the clerical mechanism which gave it practical effect. Certainly he has been fully informed as to the specific findings which underlie the order of disbarment. There is no requirement that every last jot and tittle of the court's holding be spelled out in exquisite detail.

The invidious discrimination issue tendered relates to the workings of Brooklyn Bar Association in commencing a disciplinary proceeding. It should be noted that the "facts" asserted by petitioner in support of his contention are not a matter of record. The Association grievance committee did investigate, did give written notice and did hold hearings. Madera delivered a letter to the committee declining to testify after he had been served with a subpoena (A301-307). He did everything he could to hinder

the investigation and has been constantly complaining about his own conduct ever since.

The issue tendered as to the conduct of the grievance committee chairman in supervising Madera's restitution to his client of money owed by him is virtually incomprehensible. There was no settlement. Madera was required to disgorge what amounted to the fruits of a conversion. His ultimate compliance with the requirement did not clothe him with any due process rights or immunize him from the consequences of his wrongdoing.

CONCLUSION

There is no substance to the petition and it is respectfully prayed that it be denied.

Respectfully submitted,

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